Ancotech, Inc. *and* International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL–CIO. Case 7–CA–45077

June 27, 2003

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN AND WALSH

The General Counsel seeks a default judgment in this case on the ground that the Respondent has withdrawn its answer to the complaint and has not filed an answer to the amended complaint. Pursuant to a charge filed by the Union on April 26, 2002, the General Counsel issued the complaint on June 25, 2002, against Ancotech, Inc., the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the Act. On July 9, 2002, the Respondent filed an answer to the complaint. However, on September 13, 2002, the Respondent withdrew its answer.[1] Thereafter, on September 18, 2002, the General Counsel issued an amended complaint, to which the Respondent has not filed an answer.

On November 13, 2002, the General Counsel filed a Motion for Default Summary Judgment with the Board. On November 15, 2002, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Default Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint and amended complaint affirmatively state that unless an answer is filed within 14 days of service, all the allegations therein will be considered admitted. Although the Respondent filed an answer to the complaint, it subsequently withdrew its answer. The withdrawal of an answer has the same effect as a failure to file an answer, i.e., the allegations in the amended consolidated complaint must be considered to be true.[2] Further, the Respondent has not filed an answer to the amended complaint.

Accordingly, we grant the General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation with an office and place of business located at 2525 Beech Daly Road, Dearborn Heights, Michigan, has been engaged in manufacturing automotive related metal products.

During the 12-month period ending December 31, 2001, the Respondent, in conducting its business operations, purchased goods and materials valued in excess of $50,000 from points located outside the State of Michigan and caused these goods and materials to be shipped directly to its Dearborn Heights, Michigan facility. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, the following individuals held the positions set forth opposite their names and have been supervisors of Respondent within the meaning of Section 2(11) of the Act and/or agents of Respondent within the meaning of Section 2(13) of the Act:

Kazuo Saito	President
Francis K. Kotcher Jr., CPA	Trustee
George Kasami	Plant Manager
James Bevins	R&D Engineering Manager
Alan Maliszewski	General Manager
Barb Gibson	Inspection Supervisor
James Darling	Controller
Clint Straub	Production Manager
Roscoe Johnson	Production Supervisor
Darla Dennell	Accountant

The following employees of the Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All production and maintenance employees, including shipping and receiving employees and inspectors at the Respondent's facility located at Dearborn Heights, Michigan; but excluding all guards and supervisors as defined in the Act.

[1] According to the uncontroverted allegations in the motion for default judgment, during a pretrial conference call between the parties and the administrative law judge on September 11, 2002, the Respondent's counsel indicated that Respondent intended to withdraw its answer and also waived its right to answer an amended complaint that was to issue.

[2] See *Maislin Transport*, 274 NLRB 529 (1985).

Since in or about 1967 and at all material times, the Union has been the designated exclusive collective-bargaining representative of the unit and since then the Union has been recognized as the representative by the Respondent. This recognition has been embodied in a series of collective-bargaining agreements, the most recent of which is effective from April 23, 2001 until April 20, 2003. At all times since in or about 1967, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

About February 22, 2002, the Respondent laid off all unit employees employed at its Dearborn Heights facility and thereafter closed its facility.

Since about February 22, 2002, the Respondent, by its agents Kazuo Saito and Francis K. Kotcher Jr., failed to continue in effect all the terms and conditions of its collective-bargaining agreement with the Union and has repudiated the agreement by, inter alia, failing to pay fringe benefits, including vacation pay, and failing to comply with the seniority provisions.

The Respondent engaged in the conduct described above without the Union's consent and without providing the Union with adequate notice and an opportunity to bargain regarding the effects of its actions on unit employees. The subjects set forth above relate to wages, hours, and other terms and conditions of employment of the unit and are mandatory subjects for the purposes of collective bargaining.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has failed and refused to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees within the meaning of Section 8(d) of the Act, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, to remedy the Respondent's unlawful failure and refusal to bargain with the Union about the effects of the Respondent's decision to close its Dearborn Heights facility and lay off all its unit employees, we shall order the Respondent to bargain with the Union, on request, about the effects of that decision. Because of the Respondent's unlawful conduct, however, the laid-off unit employees have been denied an opportunity to bargain through their collective-bargaining representative. Meaningful bargaining cannot be assured until some measure of economic strength is restored to the Union. A bargaining order alone, therefore, cannot serve as an adequate remedy for the unfair labor practices committed.

Accordingly, we deem it necessary, in order to ensure that meaningful bargaining occurs and to effectuate the policies of the Act, to accompany our Order with a limited backpay requirement designed to make whole the employees for losses suffered as a result of the violations and to recreate in some practicable manner a situation in which the parties' bargaining position is not entirely devoid of economic consequences for the Respondent. We shall do so by ordering the Respondent to pay backpay to the laid off employees in a manner similar to that required in *Transmarine Navigation Corp.*, 170 NLRB 389 (1968),[3] as clarified by *Melody Toyota*, 325 NLRB 846 (1998).

Thus, the Respondent shall pay its laid off employees backpay at the rate of their normal wages when last in the Respondent's employ from 5 days after the date of this Decision and Order until occurrence of the earliest of the following conditions: (1) the date the Respondent bargains to agreement with the Union on those subjects pertaining to the effects of the closing of its facility on its employees; (2) a bona fide impasse in bargaining; (3) the Union's failure to request bargaining within 5 business days after receipt of this Decision and Order, or to commence negotiations within 5 days after receipt of the Respondent's notice of its desire to bargain with the Union; or (4) the Union's subsequent failure to bargain in good faith.

In no event shall the sum paid to these employees exceed the amount they would have earned as wages from the date on which they were laid off to the time they secured equivalent employment elsewhere, or the date on which the Respondent shall have offered to bargain in good faith, whichever occurs sooner. However, in no event shall this sum be less than the employees would have earned for a 2-week period at the rate of their normal wages when last in the Respondent's employ. Backpay shall be based on earnings which the laid off employees would normally have received during the applicable period, less any net interim earnings, and shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

In addition, having found that the Respondent violated Section 8(a)(5) and (1) since February 22, 2002, by failing and refusing to continue in effect all the terms and conditions of, and repudiating, the collective-bargaining agreement, by, inter alia, failing to pay fringe benefits, including vacation pay, and by failing to comply with the seniority provisions, we shall order the Respondent to

[3] See also *Live Oak Skilled Care & Manor*, 300 NLRB 1040 (1990).

make whole its unit employees for any loss of earnings and other benefits they have suffered as a result. In addition, we shall order the Respondent to make all contractually-required benefit fund contributions, if any, that have not been made since the same date, including any additional amounts due the funds in accordance with *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 6 (1979). The Respondent shall also reimburse unit employees for any expenses ensuing from its failure to make the required contributions, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. 661 F.2d 940 (9th Cir. 1981).[4] All payments to the unit employees shall be computed in accordance with *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, supra.[5]

Finally, in view of the fact that the Respondent's Dearborn Heights' facility is closed, we shall order the Respondent to mail a copy of the attached notice to the Union and to the last known addresses of its former employees in order to inform them of the outcome of this proceeding.

ORDER

The National Labor Relations Board orders that the Respondent, Ancotech, Inc., Dearborn Heights, Michigan, its officers, agents, successors, and assigns, shall

Cease and desist from

(a) Failing and refusing to bargain collectively and in good faith with International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL–CIO, as the exclusive collective-bargaining representative for the unit described below, concerning the effects on the unit employees of its decision to close its Dearborn Heights, Michigan facility and lay off all its unit employees.

The unit is:

> All production and maintenance employees, including shipping and receiving employees and inspectors at the Respondent's facility located at Dearborn Heights, Michigan; but excluding all guards and supervisors as defined in the Act.

(b) Failing to continue in effect all the terms and conditions of, and repudiating, the collective-bargaining agreement by, inter alia, failing to pay fringe benefits, including vacation pay, and by failing to comply with the seniority provisions.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union over the effects on unit employees of its decision to close its Dearborn Heights, Michigan facility and lay off the unit employees, and reduce to writing and sign any agreement reached as a result of such bargaining.

(b) Pay the laid-off unit employees their normal wages when last in Respondent's employ from 5 days after the date of this Decision and Order until the occurrence of the earliest of the following conditions: (1) the date the Respondent bargains to agreement with the Union on those subjects pertaining to the effects of the closing of its facility on its employees; (2) a bona fide impasse in bargaining; (3) the Union's failure to request bargaining within 5 business days after receipt of this Decision and Order, or to commence negotiations within 5 days after receipt of the Respondent's notice of its desire to bargain with the Union; or (4) the Union's subsequent failure to bargain in good faith; but in no event shall the sum paid to any of the employees exceed the amount they would have earned as wages from the date on which they were laid off to the time they secured equivalent employment elsewhere, or the date on which the Respondent shall have offered to bargain in good faith, whichever occurs sooner; provided, however, that in no event shall this sum be less than the employees would have earned for a 2-week period at the rate of their normal wages when last in the Respondent's employ, with interest, as set forth in the remedy section of this decision.

(c) Make the unit employees whole for any loss of earnings and other benefits they may have suffered as a result of the failure to pay, inter alia, fringe benefits, including vacation pay, and to comply with the seniority provisions of the collective-bargaining agreement since February 22, 2002, with interest, as described in the remedy section of this decision.

(d) Make all the contractually required benefit fund contributions, if any, that have not been made on behalf of the unit employees since February 22, 2002, and reimburse unit employees for any expenses ensuing from its failure to make the required contributions, with interest, in the manner set forth in the remedy section of this decision.

[4] To the extent that an employee has made personal contributions to a fund that are accepted by the fund in lieu of the employer's delinquent contributions during the period of the delinquency, the Respondent will reimburse the employee, but the amount of such delinquency will constitute a setoff to the amount that the Respondent otherwise owes the fund.

[5] Inasmuch as the Dearborn Heights facility was closed on the same date as the Respondent ceased paying contractually required benefits (February 22, 2002), the Respondent shall only be required to make whole the unit employees and the funds for benefits that had accrued prior to the date of closure. See *Laimbeer Packaging Co.*, 339 NLRB No. 28 (2003).

(e) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(f) Within 14 days after service by the Region, duplicate and mail at its own expense and after being signed by the Respondent's authorized representative, copies of the attached notice marked "Appendix"[6] to all former employees who were employed by the Respondent when it ceased operations at the Dearborn Heights facility on about February 22, 2002.

(g) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. June 27, 2003

Robert J. Battista, Chairman

Wilma B. Liebman, Member

Dennis P. Walsh, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to bargain collectively and in good faith with International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL–CIO, as the exclusive collective bargaining representative for the unit described below, concerning the effects on the unit employees of our decision to close our Dearborn Heights, Michigan facility and layoff all our unit employees.

All production and maintenance employees, including shipping and receiving employees and inspectors at our facility located at Dearborn Heights, Michigan; but excluding all guards and supervisors as defined in the Act.

WE WILL NOT fail to continue in effect all the terms and conditions of, or repudiate, the collective-bargaining agreement by, among other things, failing to pay fringe benefits including vacation pay, and failing to comply with the seniority provisions.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, on request, bargain with the Union over the effects on unit employees of our decision to close our Dearborn Heights, Michigan facility and lay off all the unit employees, and reduce to writing and sign any agreement reached as a result of such bargaining.

WE WILL pay the unit employees limited backpay in connection with our failure to bargain over the effects of our decision to close our Dearborn Heights, Michigan facility and to lay off employees as required by the Decision and Order of the National Labor Relations Board.

WE WILL make the unit employees whole for any loss of earnings and other benefits they may have suffered as a result of our failure to pay, among other things, fringe benefits, including vacation pay, and our failure to comply with the seniority provisions of the collective-bargaining agreement since February 22, 2002, with interest.

WE WILL make all contractually-required benefit fund contributions, if any, that have not been made on behalf of the unit employees since February 22, 2002, and reimburse unit employees for any expenses ensuing from our failure to make the required contributions, with interest.

ANCOTECH, INC.

[6] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."